LIBERTY INSURANCE BHD v. KOAY GHEE SEONG & ORS

HIGH COURT MALAYA, PULAU PINANG
QUAY CHEW SOON J
[ORIGINATING SUMMONS NO: PA-24 NCC-5-01-2025]
8 JULY 2025

Abstract – *The concept of a prudent insurer is an entrenched principle in a contract of insurance. This concept requires the insurer, who is entering into a contract of insurance, to exercise prudence before issuing a policy covering risks. Insurers who fail to act as a prudent insurer would be taken to have waived their right to assert a fact as regards which they have acted imprudently.*

INSURANCE: *Policy – Indemnity policy – Third-party motor vehicle indemnity policy – Policy issued for lorry registered in name of deceased – Lorry driven by deceased's son involved in road accident with motorcycle ridden by third-party – Third party issued notice to insurer notifying intention to file suit against deceased's son – Insurer sought to declare policy void on grounds of non-disclosure that registered owner of lorry had passed away – Whether there was insurable interest – Effect of death of deceased before policy was issued by insurer – Right of innocent third-party to claim – Whether insurer prudent in issuing policy – Road Transport Act 1987, ss. 91(1) & 96(2) – Financial Services Act 2013, Schedule 9*

ROAD TRAFFIC: *Accident – Insurance – Third-party motor vehicle indemnity policy – Policy issued for lorry registered in name of deceased – Lorry driven by deceased's son involved in road accident with motorcycle ridden by third-party – Third party issued notice to insurer notifying intention to file suit against deceased's son – Insurer sought to declare policy void on grounds of non-disclosure that registered owner of lorry had passed away – Whether there was insurable interest – Right of innocent third-party to claim – Road Transport Act 1987, ss. 91(1) & 96(2) – Financial Services Act 2013, Schedule 9*

The plaintiff had issued a third-party motor vehicle indemnity policy ('policy'), pursuant to s. 91(1) of the Road Transport Act 1987 ('RTA'), providing third-party coverage for a motor lorry. The policy was issued in the name of deceased. The lorry, driven by the deceased's son ('second defendant'), was involved in a road accident with the motorcycle ridden by the third defendant. The collision occurred when the lorry emerged from a side road into the path of the motorcycle. The accident injured the third defendant and left him paralysed waist down. The third defendant issued a notice, pursuant to s. 96(2) of the RTA, addressed to the plaintiff, notifying that he would file a suit against the driver of the lorry and its registered

owner. Following that, the third defendant commenced a suit against the second defendant and the deceased. Hence, the present originating summons by the plaintiff, seeking a declaration that the policy was void on the grounds that: (i) the policy was taken without disclosing the fact that the deceased, the registered owner of the lorry, had passed away in 2018 and, this non-disclosure offended the principle of *uberrimae fidae*; and (ii) since the registered owner had passed away, he had no insurable interest to take out the policy for the lorry as he had no capacity to enter into the insurance contract.

Held (dismissing originating summons):

(1) The doctrine of *uberrimae fidei* did not apply to deny the third defendant, an innocent third-party , of his right to claim under the policy. A lack of insurable interest, on the part of the insured, was no ground to declare the policy as void in the claim by the third defendant. (paras 26 & 29)

(2) If the plaintiff sought to rely on non-disclosure or lack of insurable interest as the basis to declare the policy void, it ought to have obtained from the proposer a proposal form containing information required for the insurer to consider whether or not to undertake the third-party risks, before issuing the policy. The proposal form should contain a warranty that the truth of the proposer's answers shall be the basis of the insurance contract and the proposal form must be signed by the proposer. This, the plaintiff failed to do. The plaintiff did not verify the accuracy of the information given in the proposal form. The plaintiff cannot now raise non-disclosure or lack of insurable interest as a ground to resist a claim by an innocent third-party . (paras 30, 36 & 46)

(3) Since the plaintiff was putting forward non-disclosure as its ground to declare the policy void, the plaintiff had to satisfy the court that it complied with the statutory duty imposed upon it under sch. 9 of the Financial Services Act 2013. However, nowhere in the affidavits filed by the plaintiff did it allude to the fact that the proposer had been informed in writing of his pre-contractual duty of disclosure. Instead, the relevant proposal form exhibited by the plaintiff was undated and unsigned by the proposer. Therefore, the plaintiff: (i) had waived its right to raise non-disclosure as a ground to defeat the third defendant's claim; and (ii) was estopped from contending that the policy was obtained through misrepresentation or non-disclosure. (paras 48 & 55)

Case(s) referred to:

Abuseman Jamaluddin v. Etiqa Takaful Bhd [2020] 10 CLJ 151 CA ***(refd)***

AmGeneral Insurance Bhd v. Sa' Amran Atan & Ors And Other Appeals [2022] 8 CLJ 175 FC ***(refd)***

Balamoney Asoriah v. MMIP Services Sdn Bhd [2020] 1 CLJ 476 CA ***(refd)***

Malaysia National Insurance Sdn Bhd v. Lim Tiok [1997] 2 CLJ 351 SC ***(refd)***

Mohd Riza Mat Rani & Ors v. Zurich General Takaful Malaysia Bhd & Anor [2025] 3 CLJ 823 CA ***(refd)***

Newsholme Brothers v. Road Transport and General Insurance Company Limited (1929) 2 KB 356 ***(refd)***

Siu Yin Kwan (Administratrix Of The Estate Of Chan Ying Lung Deceased) & Anor v. Eastern Insurance Company Ltd [1993] CLJU 65; [1993] 1 LNS 65 CA ***(refd)***

Wise Underwriting Agency Ltd And Others v. Grupo Nacional Provincial SA [2004] EWCA Civ 962 ***(refd)***

Legislation referred to:

Financial Services Act 2013, Schedule 9

Road Transport Act 1987, ss. 91(1), 94, 95, 96(1), (2), (3)

For the the plaintiff - VK Dasaratharaj Pillai Krishnasamy Pillai & Aniza Sultan; M/s VK Raj & Bavani

For the 3rd defendant - S Parameswaran Subramaniam & Thinagara Pothuval Gopalakrishnan; M/s Arulsingam Paramjit Kaur Co

Reported by Najib Tamby

JUDGMENT

Quay Chew Soon J:

Introduction

[1] The plaintiff ("P") is an insurance company who issued a third-party motor vehicle insurance cover for motor lorry registration number KG 4897 ("lorry").

[2] *Via* this originating summons dated 9 January 2025, P seeks the following declarations:

(i) that the insurance policy no: HQM 429129/22-02 ("third-party motor vehicle indemnity policy") issued by P in the name of Koay Kuan Liong ("deceased") to cover the lorry is void and unenforceable;

(ii) that P is not liable to make any payment under the third-party motor vehicle indemnity policy in relation to the road accident that occurred on 22 February 2023 ("road accident"), involving the lorry driven by the second defendant and motorcycle registration number KDD 690 ("motorcycle") ridden by the third defendant ("D3");

A (iii) that P is not liable under s. 96(1) of the Road Transport Act 1987 ("RTA 1987") to pay up on any judgment which may be obtained by D3 against the first and second defendants in any action that may be filed in connection with the road accident; and

B (iv) that P is not the insurer concerned for the lorry at the time of the road accident.

[3] D3 was injured and became paralysed waist down as a result of the road accident. D3 contends that he is an innocent third-party who was severely injured as a result of the road accident. The road accident occurred C when the lorry (driven by the second defendant) emerged from a side road into the path of the motorcycle (ridden by D3) and collided with the motorcycle.

[4] On 19 June 2025, I dismissed this originating summons. Here are my reasons.

D **Background Facts**

[5] P issued the third-party motor vehicle indemnity policy pursuant to s. 91(1) of the RTA 1987, providing third-party cover for the lorry effective from 1 September 2022 to 31 August 2023. The third-party motor vehicle E indemnity policy was issued in the name of the deceased, who had passed away on 22 July 2018.

[6] The administrator of the estate of the deceased is the second defendant. He became the administrator pursuant to an order of court dated 24 June 2019. When the third-party motor vehicle indemnity policy was issued, the F second defendant was already the administrator of the estate of the deceased.

[7] On 22 February 2023, the lorry was involved in the road accident with the motorcycle ridden by D3. At the time of the road accident, the lorry was driven by the second defendant. He admitted emerging from a side road onto the path of D3 and colliding with the motorcycle. D3 suffered severe injuries G that has left him paralysed waist down.

[8] D3, through his solicitors, issued a s. 96(2) RTA 1987 notice dated 2 June 2023 addressed to P. Notifying that D3 will be filing a suit against the driver of the lorry and its registered owner.

H **[9]** Thereafter on 22 November 2023, D3 filed a writ and statement of claim in the Butterworth Sessions Court Summons No. PB-B53KJ-56-11/ 2023. The suit was filed against the driver of the lorry (the second defendant) and its registered owner (the deceased).

[10] P then filed this originating summons, seeking a declaration that the I third-party motor vehicle indemnity policy issued by it to cover third-party risks involving the lorry is void.

Plaintiff's Case

[11] P alleges that the third-party motor vehicle indemnity policy was entered into by the insured's son (the second defendant), without disclosing that the registered owner of the lorry (his father), had passed away.

[12] P's contention is two-fold:

(i) firstly, since the third-party motor vehicle indemnity policy was taken without disclosing the fact that the deceased (the registered owner of the lorry) had passed away in 2018, there was material non-disclosure which offends the principle of *uberrimae fidei* or the duty of utmost good faith; and

(ii) secondly, since the registered owner of the lorry had passed away, he had no insurable interest to take out the third-party motor vehicle indemnity policy for the lorry, as he had no capacity to enter into the insurance contract.

Third Defendant's Case

[13] D3's case is this.

(i) at the time of the road accident, the lorry was covered by the third-party motor vehicle indemnity policy issued by P. D3 is an innocent third-party who was injured in the road accident involving the lorry and he should be compensated. This is regardless of the contractual dispute concerning non-disclosure or capacity to contract, which is a matter between the insurer and the insured;

(ii) third-party motor vehicle insurance is mandated by statute. It is issued by insurance companies for the benefit and protection of innocent third-party road users. D3 has the right to be compensated under the third-party motor vehicle indemnity policy;

(iii) P failed to act as a prudent insurer when issuing the third-party motor vehicle indemnity policy, knowing very well that it is being sold for a premium to benefit innocent third parties; and

(iv) non-disclosure is a matter between the policy holder and P. D3's rights should not be affected. Especially since P failed to act as a prudent insurer in failing to carry out even the minimum requirements imposed upon it under the law. P is estopped from approaching the courts for the relief of declaration, to deny innocent third parties from being compensated under the third-party motor vehicle insurance.

A **The Effect Of The Death Of The Deceased Before The Third Party Motor Vehicle Indemnity Policy Was Issued By The Plaintiff, And The Right Of An Innocent Third Party To Claim Thereunder**

[14] P contends that there was non-disclosure of the fact of the death of the deceased. As such, there was a breach of the principle of *uberrimae fidei*.

B

[15] It is also contended that having passed away, the deceased had no insurable interest to take out the third-party motor vehicle indemnity policy. The deceased had no capacity to enter into the insurance contract with P.

[16] Nevertheless, in relation to compulsory third-party motor vehicle C insurance mandated by s. 96 of the RTA 1987, the court has observed that the said provision is a social legislation. It is intended to preserve the rights of third parties who have suffered losses and injuries as a result of vehicular accidents.

[17] In *Malaysia National Insurance Sdn Bhd v. Lim Tiok* [1997] 2 CLJ 351; D [1997] 2 MLJ 165, the Supreme Court endorsed the view that the underlying purpose of compulsory motor insurance against third-party risks is to ensure that innocent third parties who are injured in vehicular accidents are given full and effective protection, regardless of the private insurance arrangement between the insurer and the insured.

E

[18] In *Abuseman Jamaluddin v. Etiqa Takaful Bhd* [2020] 10 CLJ 151; [2020] 6 MLJ 386, the Court of Appeal allowed the appeal of the second respondent, the innocent third-party in that case. It was held that the second respondent was entitled to enforce his judgment against the applicant insurer therein.

F

[19] The Court of Appeal observed that s. 96 of the RTA 1987 must be read together with s. 94 thereof. Section 94 of the RTA 1987 prohibits the insurer from repudiating liability on the grounds that the insured had breached conditions of the insurance policy. Consequently, the second respondent could execute his rights under s. 96(1) of the RTA 1987 and claim against G the applicant insurer. Thus, the second respondent's statutory rights under s. 96(1) of the RTA 1987 was fully preserved.

[20] The recent case of *Mohd Riza Mat Rani & Ors v. Zurich General Takaful Malaysia Bhd & Anor* [2025] 3 CLJ 823; [2025] 4 MLRA 176 is a typical case H of non-disclosure by the proposer and lack of insurable interest in procuring the third-party motor vehicle insurance. In allowing the appeal, the Court of Appeal held that the compulsory insurance regime under s. 96 of the RTA 1987 reflects the social policy of Parliament to prevent insurers from avoiding compensating innocent third parties.

I **[21]** The facts of that case are as follows:

(i) the plaintiff had sued the driver of a car bearing registration number PFT 1327 as the first defendant and the insured as the second defendant for injuries suffered as a result of a vehicular accident. A third-party motor

vehicle insurance had been issued to cover motorcar number PFT 1327, which carried chassis number PL1CFISNR4F179164. The said policy was issued in the name of the second defendant;

(ii) upon investigation, the records showed that the car with registration number PFT 1327, carrying chassis number PL1CFISNR4F179164 had been written off much earlier in 2011 by the then insurer, following an accident by the second defendant. The second defendant had surrendered the car (PFT 1327), together with its registration card and the keys to the then insurer, and received the sum of RM9,400 from them as settlement of her claim;

(iii) the motor car number PFT 1327, which met with an accident in 2020, carried a different chassis number and was described as a "cloned car". The second defendant, in whose name the motor vehicle insurance policy had been issued, lodged a police report denying any knowledge of the said insurance policy;

(iv) the insurer then took out an originating summons seeking to declare the said insurance policy as void, and consequently not liable to pay on the judgment that may be obtained by the plaintiff. The High Court granted the declaration; and

(v) on appeal, the Court of Appeal allowed the appeal. The Court of Appeal held that since there was in effect a third-party motor vehicle insurance covering motor car number PFT 1327 at the time of the said accident, an innocent third-party road user is entitled to be compensated under the said insurance policy.

[22] The Court of Appeal said:

> [23] In our view, this argument failed to consider the following points in respect of a third-party insurance protection in the RTA. The car registration number and the registered owner that is stated in the insurance policy correctly matched the JPJ records. It may well be that the car involved in the accident is a different car than the car originally registered. However, *what is sought to be protected by the compulsory insurance policy regime under s 96 of the RTA is coverage of risks to innocent third – party road users* by insurers who had underwritten the said risk. In other words, *s. 96 reflects the social policy of Parliament to prevent insurers from avoiding compensating innocent road users by solely relying on the terms of the contract with the insured*.
>
> (emphasis added)

[23] In essence, *Mohd Riza* (*supra*) is a case where there had been misrepresentation or non-disclosure of the fact that the actual motorcar number PFT 1327 which was insured had been written off in 2011. And that motorcar number PFT 1327 which met with an accident in 2020 was a different car, as it carried a different chassis number on its engine.

Furthermore the second defendant, under whose name the third-party motor vehicle insurance was issued, denied any knowledge of the car and the insurance. Notwithstanding this, the Court of Appeal held that the insurer cannot deny liability to compensate an innocent third-party claiming under the insurance, on the grounds of breach of the terms of the policy.

[24] In *AmGeneral Insurance Bhd v. Sa' Amran Atan & Ors And Other Appeals* [2022] 8 CLJ 175; [2022] 6 MLRA 224, the Federal Court observed that the common law doctrine of *uberrimae fidei* is a doctrine that is only applicable between the insured and the insurer. It does not affect the rights of third parties under the provisions of ss. 94 and 95 of the RTA 1987.

[25] The Federal Court said (at p. 199 (CLJ); p. 234 (MLJ)):

> [12] In any case, the *doctrine of uberrima fidei is a common law doctrine that is only applicable between the insured and the insurer and does not affect the rights of third parties under the provisions of ss. 94 and 95 of the RTA, which protect third parties against risks arising out of the use of motor vehicles.*
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> (emphasis added)

[26] In the premises, I find that the doctrine of *uberrimae fidei* does not apply to deny D3 (an innocent third-party) of his right to claim under the third-party motor vehicle indemnity policy.

[27] In determining whether insurable interest of an insured is a necessary requirement for there to be a valid and enforceable third-party motor vehicle insurance policy, the Federal Court in *Sa' Amran Atan* (*supra*) referred to the Privy Council case of *Siu Yin Kwan (Administratrix Of The Estate Of Chan Ying Lung Deceased) & Anor v. Eastern Insurance Company Ltd* [1993] CLJU 65; [1993] 1 LNS 65; [1993] 1 MLRA 771, which emanated from Hong Kong. There, the Privy Council had the occasion to consider whether insurable interest is a requirement for a valid third-party motor vehicle insurance.

[28] The Privy Council held that for a third-party motor vehicle insurance to be valid, there is no requirement for insurable interest. Following *Siu Yin Kwan* (*supra*), the Federal Court in *Sa' Amran Atan* (*supra*) held that the insurer is liable to compensate an innocent third-party , notwithstanding that the insured ceased to have insurable interest under the policy.

[29] In the premises, I find that a lack of insurable interest on the part of the insured is no ground to declare the third-party motor vehicle indemnity policy as void in the claim by D3, who is an innocent third-party in this case.

Whether Plaintiff Was A Prudent Insurer In Issuing The Third Party Motor Vehicle Indemnity Policy

[30] Next, if P seeks to rely on non-disclosure or lack of insurable interest as the basis to declare the third-party motor vehicle indemnity policy void, it ought to have obtained from the proposer a proposal form (containing

information required for the insurer to consider whether or not to undertake the third-party risks), before issuing the third-party motor vehicle indemnity policy. The proposal form should contain a warranty that the truth of the proposer's answers shall be the basis of the insurance contract and the proposal form must be signed by the proposer. This P failed to do.

[31] In *Newsholme Brothers v. Road Transport and General Insurance Company Limited* (1929) 2 KB 356 at 362, the UK Court of Appeal observed:

> The practice of life and accident insurers is different; they *employ an agent to canvas and procure proposals* for them. In general, he cannot make contracts binding them, but only submits proposals for their consideration. Unlike the marine underwriter, *they do ask questions*: they *give their agent a proposal form containing a number of questions on matters which they think material*; and he is *expected to submit that proposal form with answers of the proposed assured filled in and signed by the assured*. The *proposal form contains a promise, a warranty, that the truth of the proposer's answers shall be the basis of the contract* and is *signed by the proposer*.
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> (emphasis added)

[32] In the present case, P had produced the relevant proposal form in its affidavit dated 14 April 2025 (encl. 13). In it, the name of the deceased is stated as the proposer. The proposal form contains a clause similar to that which was stated by the UK Court of Appeal in *Newsholme Brothers* (*supra*). Namely, "the statements and declarations in this proposal form shall be the basis of the contract of insurance". However, the proposal form was not signed by the proposer.

[33] P tried to explain that the proposal form was not signed because it is a renewal form. But P cannot take the attitude that it does not have the duty to carry out verification on matters that could or ought to have been verified by it, before issuing the motor vehicle insurance to cover third-party risks. It would appear that this was the attitude taken by P in the belief that if there was any non-disclosure or concealment discovered when faced with a claim, it could then seek to void the insurance contract on that basis.

[34] In the present matter, we are dealing with third-party motor vehicle insurance that is mandated by law. It is not sold for the benefit of the insured, but for the benefit of innocent third-party road users. An insurer who sells mandatory third-party motor vehicle insurance for the benefit of third-party road users must act as a prudent insurer and ensure that it enters into a contract with a party who has the capacity to enter into such a contract. A failure on its part to act as a prudent insurer should disentitle P to subsequently approach the court for the relief of declarations, which have the effect of denying innocent third parties' compensation for injuries and losses suffered in a vehicular accident.

[35] I would have thought that a simple request to check the identity card of the proposer could have revealed that it was not the deceased who was applying to purchase the third-party motor vehicle indemnity policy, as he had already passed away.

[36] Having issued the third-party motor vehicle indemnity policy for the lorry without obtaining a declaration from the proposer that the information given in the proposal form are correct, and that the same shall be the basis of the insurance contract, P cannot now raise non-disclosure or lack of insurable interest as a ground to resist a claim by an innocent third-party . P has brought this misfortune upon itself, when it issued the third-party motor vehicle indemnity policy without verifying the information given and based on an unsigned proposal form. That is imprudent, to say the least. The fault lies on the part of the insurer, not the innocent third-party . An innocent third-party should not be made to suffer the lack of care exercised by P when issuing the third-party motor vehicle indemnity policy in this case.

Schedule 9 Of The Financial Services Act 2013

[37] In addition, the traditional common law position that the duty of disclosure in an insurance contract solely rests on the proposer, and that there is no duty on the part of the insurer to verify disclosures, no longer holds true. The law in this regard has been altered by sch. 9 of the Financial Services Act 2013 ("FSA 2013"), which has prescribed a new statutory regime.

[38] In respect of insurance contracts other than consumer insurance contracts, para. 4(3), Part 2 of sch. 9 of the FSA 2013 reads:

> (3) Where a proposer fails to answer or gives an incomplete or irrelevant answer to a question contained in the proposal form or asked by the licensed insurer and the **matter was not pursued further by the insurer, compliance with the proposer's duty of disclosure in respect of the matter shall be deemed to have been waived by the insurer**.
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> (emphasis added)

[39] In respect of consumer insurance contracts, para. 5(6), Part 2 of sch. 9 of the FSA 2013 reads:

> (6) Where the consumer fails to answer or gives an incomplete or irrelevant answer to any request by the licensed insurer under subparagraph (1) or subsubparagraph (3)(a), or fails to confirm or amend any matter under subsubparagraph (3)(b), or does so incompletely or provides irrelevant information, as the case may be, and the answer or matter was not pursued further by the insurer, compliance with the consumer's duty of disclosure in respect of the answer or matter shall be deemed to have been waived by the insurer.

[40] "Consumer insurance contract" means a contract of insurance entered into, varied or renewed by an individual wholly for purposes unrelated to the individual's trade, business or profession. In either case (whether it be a 'consumer insurance contract' or 'an insurance contract other than a consumer insurance contract'), implicit in para. 4(3) and para. 5(6), Part 2 of sch. 9 of the FSA 2013, is the duty of the insurer to verify the information contained in the proposal form.

[41] Here, when the name of the deceased was stated in the proposal form and P failed to verify that information (which could have been easily done by requesting for the identity card of the proposer), but simply issued a motor vehicle insurance policy to cover innocent third parties, that too without obtaining a declaration of the truth of the statements contained in the proposal form, P must be taken to have waived the non-disclosure and the lack of insurable interest.

[42] P points out that the third-party motor vehicle indemnity policy was issued in the name of the deceased, being a business operated under a sole proprietorship. I do not think this changes the position. In law, a sole proprietorship or business is not a separate legal entity from its owner. Whether the third-party motor vehicle indemnity policy was issued in the name of the deceased personally, or was issued in the name of the deceased as a sole proprietorship firm, makes no difference.

[43] Moreover, as alluded to above, para. 4(3), Part 2 of sch. 9 of the FSA 2013 is in *pari materia* with para. 5(6), Part 2 of sch. 9 of the FSA 2013. Paragraph 5(6) deals with consumer insurance contracts, whereas para. 4(3) deals with insurance contracts other than consumer insurance contracts.

[44] In *Balamoney Asoriah v. MMIP Services Sdn Bhd* [2020] 1 CLJ 476, the Court of Appeal allowed the appeal and reversed the decision of the High Court which had declared the third-party motor vehicle insurance policy as void. The facts of that case (which are similar to the facts of this case) are as follows:

(i) the third-party motor vehicle insurance policy was renewed in the deceased's name after his demise. The accident had occurred after his demise;

(ii) the insurer applied to declare the third-party motor vehicle insurance policy void on the basis of a breach of *uberrimae fidei* for non-disclosure of the deceased's death. However, the Court of Appeal was of the view that the mere fact that the insured was deceased does not *ipso facto* invalidate the renewed policy;

(iii) the Court of Appeal observed that the new statutory regime under Sch. 9 of the FSA 2013 recognises the mutual duty of utmost good faith or *uberrimae fidei* that is owed at all times by both parties to the insurance contract. Whether on the part of the insurer or the insured. And whether it is in relation to a new insurance contract or a renewal of the same;

(iv) this duty of utmost good faith does not end with the imposition of duty on the consumer. In relation to the insurer, the 'doctrine of waiver' operates;

(v) where the insurer does not undertake the exercise of posing questions when considering whether or not to assume risks and enter the contract of insurance with the consumer, the insurer is deemed to have waived the right to complain that there had been a failure of disclosure;

(vi) the insurer is also deemed to have waived its right to complain in a situation where questions were posed but the consumer had come up short in their responses or had simply failed to respond to those questions. Where the insurer itself failed to follow up with the consumer on such failure, and where it did not pursue the matter, the consumer's duty of disclosure 'shall be deemed to have been waived by the insurer'; and

(vii) the Court of Appeal considered the failure of the insurer to comply with para. 5(6), Part 2 of sch. 9 of the FSA 2013. And concluded that where the insurer is in itself in breach either by not pursuing or safeguarding its own interest and obligations, it would not be open to the insurer to approach the court for a declaration under s. 96(3) of the RTA 1987 to void the insurance contract.

[45] The Court of Appeal said (at pp. 492 to 493):

> [35] These comprehensive provisions deal with how an application for a new contract or a *renewal of a contract of insurance is to be dealt with*; what happens when there has been *non-compliance by either party to this statutory regime* and, of great importance, the *operation of the doctrine of waiver* by law; distinguishing as we said earlier between contracts of insurance and consumer insurance contracts. In relation to the policy in question, it being a consumer insurance contract, para. 5 applies. *The new statutory regime recognises in sub-para. 5(9), the mutual duty of utmost good faith or uberrimae fidei that is owed at all times by both parties to the insurance contract, whether on the part of the insurer or the insured; whether it is in relation to a new insurance contract or a renewal of the same*.
>
> [36] On the part of the insurer, the new statutory regime gives the insurer the right to request answers by posing questions, either specific or general. In the case of a new contract or one which is being varied, the insurer may request or pose to the customer questions to elicit answers or information which will assist the insurer on whether it will accept the risks,

and what rates and terms it is to impose – see sub-para. 5(1). Where the insurer undertakes this exercise, the consumer owes a corresponding duty to take reasonable care not to make any misrepresentations to the insurer when answering any of the questions posed – see sub-para. 5(2). The consumer must always answer truthfully and completely – sub-para. 5(9).

[37] This *duty of utmost good faith does not end with the imposition of duty on the consumer. In relation to the insurer, the doctrine of waiver operates*. Where the insurer does not undertake the exercise of posing questions when considering whether or not to assume risks and enter the contract of insurance with the consumer, the *insurer is deemed to have waived the right to complain that there has been a failure of disclosure* – sub-para. 5(5).

[38] The insurer is also deemed to have waived its right to complain in the second situation where questions are posed but the consumer has come up short in their responses or have simply failed to respond to those questions. Now, if either of those situations arise, that is where the consumer fails to answer, or where the consumer gives an incomplete or irrelevant answer, it is implied in sub-para. 3(6) that the insurer is to follow up with the consumer on such failure. Where the insurer itself fails to do so, where it does not pursue the matter, the *consumer's duty of disclosure "shall be deemed to have been waived by the insurer"* under sub-para. 5(6).

[39] The above deals with new contracts of insurance or contracts which are being varied. There are also specific provisions dealing with *renewals of the insurance policy*. In such a case, sub-subparas. 5(3)(a) and (b) apply.

[40] In such a situation, the insurer may pose one or specific questions, once again, for the purpose of ascertaining whether to assume the risks, and what rates or terms are to be imposed. Alternatively, the insurer may give to the consumer a copy of any matter previously disclosed by the consumer in relation to the contract and request the consumer to either confirm or amend any change to the matter.

[41] When asked by the insurer, the consumer is required to respond. And, once again, if the consumer fails to respond, be it to confirm or to amend any matter queried by the insurer, the insurer is expected to pursue the matter. If it fails to do so, just like the case of new contracts of insurance, the *insurer will be deemed to have waived its rights to require disclosure* by the consumer – see sub-para. 5(6).

[42] Thus, *whether it is a case of a new consumer insurance contract or a renewal of such contract*, the consumer is always under a duty to take reasonable care not to make any misrepresentations to the insurer – see subparas. 5(2) and (9). The consumer must ensure that there is no misrepresentation, whether deliberate or reckless, careless or even innocent.

[43] It is apparent from these provisions, that *where the insurer is in itself in breach either by not pursuing or safeguarding its own interests and obligations, it will not be open to the insurer to approach the court for a declaration under s. 96(3) of Act 333 to void the insurance contract*.

(emphasis added)

[46] In the present case, P did not verify the accuracy of the information given in the proposal form. Thus, P must be deemed to have waived its right to raise non-disclosure or issues relating to insurable interest to void the third-party motor vehicle indemnity policy.

[47] Further, para. 4(4), Part 2 of sch. 9 of the FSA 2013 provides that the insurer shall, before entering into an insurance contract, inform the proposer in writing of the proposer's pre-contractual duty of disclosure. It reads:

> A licenced insurer shall, before a contract of insurance is entered into, varied or renewed, **clearly inform a proposer in writing of the proposer's pre-contractual duty of disclosure** under this paragraph and that this duty of disclosure shall continue until the time the contract is entered into, varied or renewed.
>
> (emphasis added)

[48] Since P is putting forward non-disclosure as its ground to declare the third-party motor vehicle indemnity policy void, P has to satisfy the court that it had complied with the aforesaid statutory duty imposed upon it under sch. 9 of the FSA 2013. But nowhere in the affidavits filed by P has it alluded to the fact that the proposer had been informed in writing of his pre-contractual duty of disclosure. Instead, the relevant proposal form exhibited by P is undated and unsigned by the proposer.

[49] I consider that P has:

(i) failed to make the necessary verification of the information given in the proposal form;

(ii) failed to carry out the duty imposed on it by para. 4(4), Part 2 of Sch. 9 of the FSA 2013, which is to inform the proposer in writing of his pre-contractual duty of disclosure; and

(iii) issued the third-party motor vehicle indemnity policy to cover the lorry against third-party risks, based on an unsigned proposal form.

[50] In the circumstances, I regard P as having waived its right to raise non-disclosure as a ground to defeat D3's claim. The failure to act as a prudent insurer operates as a waiver against P from raising non-disclosure to void the third-party motor vehicle indemnity policy.

[51] The concept of a prudent insurer is an entrenched principle in a contract of insurance. This concept requires the insurer, who is entering into a contract of insurance, to exercise prudence before issuing a policy covering risks. The courts have recognised this concept and factored it in their decisions that insurers who fail to act as a prudent insurer, would be taken to have waived their right to assert a fact as regards which they have acted imprudently.

[52] In *Wise Underwriting Agency Ltd And Others v. Grupo Nacional Provincial SA* [2004] EWCA Civ 962, the UK Court of appeal held:

> [108] ... The *doctrine of waiver* in this context has therefore come to be invoked in cases where it can be said that, **if an insurer does not ask an obvious question, he will have waived disclosure of any material fact which would have been revealed by the answer**. That in turn lets in the concept of a prudent insurer since, if such a question would have been obvious to such insurer the actual insurer cannot be heard to say that such question would not have been obvious to him.
>
> (emphasis added)

[53] In the present matter, P should have asked the proposer whether he is 'Koay Kuan Liong', before accepting the proposal and issuing the third-party motor vehicle indemnity policy under his name. Instead, the agent of P (who negotiated the insurance contract on behalf of P) acknowledged in para. 3 of his statutory declaration affirmed on 6 March 2025 that the person who approached him to purchase the third-party motor vehicle indemnity policy was the second defendant (the son of the registered owner).

[54] It appears that the said agent sold the policy: (i) without asking the second defendant about his father; (ii) without obtaining a declaration of truth in the proposal form; and (iii) without a declaration that the information contained in the proposal form shall form the basis of the insurance contract.

[55] The said agent claimed that when the second defendant approached him to purchase the third-party motor vehicle indemnity policy for the lorry under the name of the registered owner (the deceased), he made a SSM search to ascertain whether the deceased was still alive. However, it is pertinent to note that the third-party motor vehicle indemnity policy was purchased for the period from 1 September 2022 to 31 August 2023. Whereas the SSM search exhibited by the said agent is a search conducted on 4 March 2025, which is long after the period of the third-party motor vehicle indemnity policy. The said agent could have easily asked the second defendant that question and ascertained that fact from him, but he failed to do so.

[56] I conclude that P ought to be estopped from now contending that the third-party motor vehicle indemnity policy was obtained through misrepresentation or non-disclosure. When it has failed to comply with sch. 9 of the FSA 2013, and also failed to act as a prudent insurer. P undertook the third-party risks based on information contained in an unsigned proposal form, which did not have a warranty that the contents therein were true.

Conclusion

[57] For the reasons above, I dismissed the originating summons herein. I ordered P to pay costs of RM8,000 to D3.